IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.
WRIT PETITION NO.2119 OF 2006

M/s. Stock Vision Consultant ..Petitioner.
V/s.
M/s.Century Consultant Ltd. & Anr. ..
Respondents.

Ms.Mamta Saadh i/b. M/s.Goenka Law Associates for petitioner.

CORAM : SWATANTER KUMAR, C.J. &
J.P. DEVADHAR, J.

DATED : 20TH NOVEMBER, 2007.

P.C. :

Nobody present on behalf of the respondents. On the last date the affidavit of service was filed. After noticing that on 28th September, 2007 despite service nobody was present on behalf of the respondents, this Court has passed an order that in case the respondents fail to remain present on the next date, the matter will be proceeded further in their absence.

2. Thus, we proceed to hear the matter ex-parte.

3. On 19/1/2002 an Award was made directing the respondents in that petition to pay a sum of Rs.5,05,902/- to the petitioner arising out of trades not resulting into any delivery on account of speculation, margin money and security deposit. An appeal was made to the Appellate Bench by the present petitioner being Appeal No.45-A of 2003. This appeal on the

very first date was dismissed on the ground as stated therein. The Appellate Bench while passing the said order dated 2nd December, 2003 had specifically noted that Mr.Chetan Shah prayed for time to appoint an Advocate. This request was declined and thereafter, it was noted that the delay of 603 days was not properly explained by the petitioner. The Bench stated that the medical certificate produced by the petitioner did not really give any specific disease and they were general in nature which do not justify the enormous delay of 603 days.

4. The contention raised before us is that the petitioner was not provided adequate opportunity of being heard and he should have been permitted to engage some advocate so as to put forward the case in its proper perspective before the Appellate Bench. It is contended before us that there was in fact no delay in filing the appeal inasmuch as, the petitioner even filed for execution of the Award in time. Thereafter, the Stock Exchange had informed the petitioner that the Award being speculative, the same could not be executed. This is the real cause for challenging the order impugned.

5. There is no deliberation on any of these issues and in fact there was no application for condonation of delay which ex-facie would show that the appeal was not barred by limitation. In the facts and circumstances of the case, we are of the

considered view that the petitioner has been denied a fair opportunity of hearing and could have been granted time to engage a counsel. There has been violation of principles of natural justice. As such, we set aside the order dated 2nd December, 2003 and remand the matter back to the Appellate Bench who shall hear the matter again on the question of limitation in Appeal No.45-A of 2003.

6. Petition is disposed of accordingly. Parties to bear their own costs.

CHIEF JUSTICE

J.P. DEVADHAR, J.